Filed 4/24/19 In re L.D. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re L.D., a Person Coming Under the Juvenile Court Law.	
KINGS COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. RICHARD D., Defendant and Appellant.	F077911 (Super. Ct. No. 17JD0088) **OPINION**

APPEAL from an order of the Superior Court of Kings County. Jennifer Lee Giuliani, Judge.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Colleen Carlson, County Counsel, and Risé A. Donlon, Deputy County Counsel, for Plaintiff and Respondent.

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Richard D. (father) appeals from an order terminating parental rights to his now nine-year-old daughter, L.D.[1] Father contends the juvenile court lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA or Act), Family Code section 3400 et seq.[2] He further contends he was not provided reasonable reunification services. Finding no reversible error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 13, 2017,[3] mother was arrested for being under the influence of a controlled substance and leaving her children, then seven-year-old L.D. and L.D.'s 22-month-old half sister S.G.,[4] unattended. The Kings County Human Services Agency (Agency) investigated the resulting referral and took the children into protective custody.

Two days later, father, who lives in Texas, called the Agency's social worker to inquire about L.D. Father said he learned through family members that his "ex" was involved with the Agency and he wanted to pick up his daughter. The social worker explained that an assessment would need to be completed before L.D. could be released to him. Father said L.D. was born in Texas and had lived there until four years ago. He lost contact with L.D. because mother would change her cell phone number and only call him when she felt it was okay for him to have contact with L.D. Father told the social worker there were custody orders out of Texas. He sent the social worker photos of the orders, but the quality was poor. Father said he would be physically present at the detention hearing and bring the custody orders with him.

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1 L.D.'s mother, Suzanne G. (mother), separately appealed from the order terminating parental rights. She argued the juvenile court erred in denying her Welfare and Institutions Code section 388 petition and failing to find the beneficial parent-child exception to adoption applied. We affirmed the termination of mother's parental rights in *In re L.D.* (Jan. 11, 2019, F077977) (nonpub. opn.).

2 Statutory references are to the Family Code, unless otherwise stated.

3 Subsequent references to dates are to dates in 2017, unless otherwise stated.

4 S.G.'s father, Rafael G., lived in Massachusetts. Rafael did not appeal.

The Detention Hearing

In its detention report, the Agency asked the juvenile court to consider the issue of jurisdiction pursuant to the UCCJEA since father alleged there were current Texas custody orders. The Agency attached the children's birth certificates, which showed L.D. was born in Texas and father was on the birth certificate, and S.G. was born in California. When L.D. was interviewed, she told the social worker she was in first grade, and lived with her mother, her mother's boyfriend, and her sister. Mother confirmed to the social worker that her residence was in Hanford, and she and the children had been in California for about four years. The maternal aunt and grandmother were interested in placement of the children, although mother was opposed to it.

The Agency filed a dependency petition on May 16, which alleged the children came within the provisions of Welfare and Institutions Code section 300, subdivision (b)(1) based on mother's failure or inability to supervise or protect the children. The detention hearing was held the following day.[5] Father, who appeared at the hearing, provided the Agency with Texas custody and child support orders. He was appointed counsel. County counsel informed the juvenile court the orders would be provided to it so the Texas court could be contacted, and asked that orders as to L.D. be made under the temporary jurisdiction of the UCCJEA. Father testified there were court orders out of Texas establishing his parental relationship to L.D.; pursuant to those court orders, he had a timeshare agreement with mother, which gave him visitation on weekends and summers, depending on where everyone lived; L.D. had lived with him at times; and he wanted the court to find him to be L.D.'s father for purposes of these proceedings.

The juvenile court stated it was taking temporary emergency jurisdiction over L.D. and would try to contact the Texas court to determine the appropriate jurisdiction. The

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5 The Honorable Jennifer Lee Giuliani presided over the detention hearing.

court found father and Rafael to be L.D.'s and S.G.'s presumed fathers respectively, ordered the children removed from mother, and gave the Agency discretion to place the children with their respective presumed fathers pending jurisdiction "upon a favorable assessment for placement." Father was able to see his daughter following the detention hearing.

The Jurisdiction and Disposition Hearings

The Agency filed an addendum report on May 22, with an attached copy of the child support orders made on L.D.'s behalf in Bexar County, Texas. The orders, issued on June 25, 2011, stated that while father and mother were appointed "Joint Managing Conservators" of L.D., mother had the exclusive right to determine L.D.'s primary residence without regard to geographic location. Father was ordered to provide monthly child support. Father had visitation rights that included spring break and over a month in the summer. The social worker contacted the Bexar County Courthouse by telephone on May 19 and "spoke with Larry at the District Clerks Office," who identified the presiding judge in the child support case as Judge Nick Catoe. The report listed Judge Catoe's address and telephone numbers in San Antonio, Texas.

The Agency filed a jurisdiction report on June 2, in which it noted a decision had not been made regarding jurisdiction under the UCCJEA. If jurisdiction was taken in California, the Agency recommended that the juvenile court find the petition true and the children remain in out-of-home care while the Agency continued to assess the fathers.

According to a case history the Agency received from the Texas Department of Family and Protective Services (DFPS), DFPS received a referral in August 2013 alleging neglectful supervision of L.D. by mother, father and the paternal grandmother. It was reported that father and paternal grandmother violated a protective order, which protected L.D. and mother from father, by having L.D. in their home and refusing to return her to mother's care. During the law enforcement investigation, mother was arrested for possession of methamphetamine and later placed on probation. The

allegations against father and the paternal grandmother were closed as "ruled out" and the allegations against mother were closed as "unable to determine." The case, however, was transferred to "Family Based Support Services." At some point, a safety plan was implemented which required all contact between mother and L.D. to be supervised by the maternal grandparents. Mother received services which included individual counseling and parenting classes. Mother completed the services and the case was closed in February 2014, when L.D. was returned to mother's custody.

The June 8 jurisdiction hearing was held before the Honorable H. Papadakis. Father appeared at the hearing via CourtCall. Judge Papadakis stated that apparently Judge Giuliani had spoken with the Texas judge and she had "some notes" on this, which included an e-mail the Texas judge sent to Judge Giuliani, and it appeared from the notes that California would assume jurisdiction. Judge Papadakis, however, was hesitant to accept that representation and suggested the matter be continued because Judge Giuliani was familiar with the situation. The attorneys all stipulated to continuing the matter to June 21.

The Agency filed a disposition report on June 14, in which it recommended the children remain in foster care and the parents be offered reunification services. In father's social study interview, he said he financially supported L.D. until she was three years old, when mother married Rafael and moved to California without his knowledge. Father said he attempted to have a long-distance relationship with L.D., but mother had "mood swings" which he believed caused her to not allow contact.

The Agency had asked Texas DFPS to conduct a courtesy home assessment and background check on father, but the results were pending. Father had maintained contact with the social worker about getting custody of his daughter. The maternal aunt, maternal grandmother, and S.G.'s paternal grandmother, all expressed interest in placement of the children. The process for approval under the Interstate Compact for the Placement of Children (ICPC) was going to be initiated for them. The Agency

recommended against placing L.D. with father because his home had not been "assessed for safety."

At the June 21 hearing, father was present via CourtCall. Judge Giuliani began by stating: "I have had communication with the judge in Texas, that Texas [c]ourt has relinquished jurisdiction to California and California is prepared to proceed." County counsel argued it would be detrimental to place the children with their fathers at that time because father had not had L.D. in his care for over four years and Rafael had not had S.G. in his care since she was three months old. The juvenile court, however, wanted more information before making a detriment finding. The court decided to address jurisdiction, and continue the hearing on disposition to address placement with the out-of-state fathers. The court found California had jurisdiction pursuant to section 3421, subdivision (a)(3) and Texas relinquished jurisdiction under section 3421, subdivision (a)(2). The court found the allegations of the petition true, after mother submitted on the reports, and continued the hearing to July 12.

The Agency filed an addendum report on July 10. Mother had been arrested on additional charges and the Agency could not locate her. Texas DFPS had completed father's home assessment. While there were no concerns noted, a criminal check was not performed on the individuals in father's home, which included the paternal grandmother, paternal uncle and paternal uncle's father.

Father had a criminal history which included: (1) a 2011 charge for manufacturing and delivering a controlled substance, which was based on father selling Vicodin to an undercover officer and resulted in father being placed on two years' probation; (2) a 2013 arrest for assault with bodily injury on a family member which, according to the police report, occurred when father grabbed mother by her arms and slammed her against the wall while arguing over custody of L.D.; and (3) a 2017 arrest for unlawfully carrying a weapon and possession of marijuana—when law enforcement conducted a traffic stop after observing father and his passenger doing hand-to-hand

transactions with pedestrians, they found father had a handgun tucked in his front waistband and a small baggie of marijuana in his front right pocket. Father told the social worker he purchased the handgun to protect himself since he had been recently shot at random and ended up in intensive care. Father claimed he intended to register the gun when he bought it, but law enforcement stopped him on his way home from making the purchase.

L.D.'s caregiver told the social worker on July 7 that L.D. had supervised phone contact with father twice to date, and no issues or concerns were reported. When the social worker asked L.D. where she would like to live if she could not live with mother, L.D. responded that she wanted to live with her maternal grandmother in Texas and not her father.

The Agency did not believe it was in L.D.'s best interest to place her with father. The Agency opined it would be detrimental for L.D. to live with father "due to the unsafe environment," as, according to the police reports, father had been engaging in criminal activity surrounding drug sales, and father obtained the handgun as a way of protection rather than seeking assistance from law enforcement. The Agency recommended father receive reunification services.

At the July 12 continued disposition hearing, father was present via CourtCall. The Agency recommended all parents be offered reunification services. After the parties submitted on the matter, the juvenile court found there was clear and convincing evidence of a substantial danger to the children if placed in mother's custody and placement of the children with their fathers would be detrimental. The court adjudged the children dependents, removed them from parental custody, and ordered reunification services be provided to mother and both fathers. The court approved the Agency's case plan, which for father required him to complete parenting classes. Father was given supervised visitation with L.D., which the social worker was to arrange either in person, if he was present in Kings County, or by phone. The social worker was to have monthly phone

contact with father in order to assess his participation in services, provide guidance regarding completing the case plan, and address his questions or concerns. The parents were advised that because one of the children was under three years of age, they would only have six months to reunify.

Orders for Expedited Placement Decisions

On November 9, there was a hearing on a request for an expedited placement decision under the ICPC. The Agency sought to assess three out-of-state relatives for placement of the children—two in Texas and one in Connecticut. The Agency stated the six-month review hearing was set for January 3, 2018, and the prognosis for reunification with the parents looked poor. The Agency wanted to place the children with approved relatives with a plan of guardianship or adoption. The Agency reported that father had been unresponsive to the Agency's attempts to contact him by phone, mail, and e-mail since the last contact on August 14. The juvenile court granted the request. On December 13, the Agency reported the assessment of the relatives in Texas for possible placement was preliminarily approved, while the Connecticut placement was preliminarily denied. The maternal grandmother was undergoing a home study that week.

The Six-Month Review Hearing

The Agency filed a status review report for the six-month review hearing on December 22, in which it recommended termination of reunification services for all parents and the setting of a permanency planning hearing (Welf. & Inst. Code, § 366.26). The maternal aunt was approved for placement of the children in December, and she was able and willing to adopt them.

The social worker had only three contacts with father during the review period—twice in July and once in December—as father had not made himself available to the Agency. On July 13, the social worker told father he would be receiving reunification services and would be mailed his case plan. On August 14, father reported by e-mail that

he was enrolling in a parenting class in his area that was to begin on August 18. The social worker mailed father a release of information form to complete and return. The social worker attempted to contact father on September 27, October 12 and November 6, but was unable to make contact with him. Each time the social worker mailed father his case plan. On December 11, the social worker sent father a letter in which she stated she had made numerous attempts to contact him by phone and e-mail, and had not received a response. The social worker included father's case plan and stated that father had not informed her he had completed a parenting class.

Father called the social worker on December 14. He said he was working in construction and continued to live with his family. He was unable to find a parenting class to fit his schedule, as he worked long hours (7:30 a.m. to 5:30 p.m.) during the week. Father said he would complete a parenting class in a "couple of weeks" and provide the social worker with a certificate of completion, but as of the writing of the report, the social worker had not received it. Father had been given a list of providers of parenting classes in his area. The social worker sent father a release of information three times by mail and e-mail to complete, which would allow the social worker to contact the parenting class facilitator for a progress report, but father had not returned the release.

With respect to visitation, the only in-person visit father had with L.D. occurred at the Agency in May, when he came to California for the detention hearing. The care providers said their attempts to contact father by phone were unsuccessful. The social worker asked L.D. in October 2017 if she wanted to contact father, but she declined. During the review period, father did not contact the social worker to inquire about L.D.'s well-being.

Father was present at the January 3, 2018 six-month review hearing via CourtCall. Because he had not received the Agency's report, the matter was continued to January 17, 2018, so he could review the report, which the Agency was ordered to send him by mail and e-mail, and communicate with his attorney.

Neither father nor the other parents were present at the January 17, 2018 continued hearing. County counsel confirmed the report was e-mailed and mailed to father at the addresses he provided. All attorneys submitted on the reports. The juvenile court adopted the proposed findings and orders. The court found that reasonable services had been offered mother and both fathers, and mother had made minimal progress toward alleviating the causes necessitating out-of-home care, while both fathers made no progress. The court terminated reunification services for all parents and set a permanency planning hearing for May 8, 2018. The court ordered the clerk to mail the "notices for the writs" pursuant to California Rules of Court, rules 8.450 and 8.452, to the parents' last known addresses, that would "include copies of the JV820 and JV825."

That day, the juvenile court's clerk mailed a document entitled "Notice of Hearing to Make a Permanent Plan and of Right to Petition for Extraordinary Writ and Proof of Service (Rule 38 and 38.1)" to mother and father. The notice advised that on January 17, 2018, the juvenile court set a permanency planning hearing to make a permanent plan for the child named in the notice, and "[i]f you wish to preserve your right to appeal the court's decision, you must file a petition for extraordinary writ. If you intend to file the petition for a writ, you must file a notice of intent to file a writ petition and request for record with the juvenile court clerk within 7 days of the date the court set the hearing. If notification of orders setting the hearing was received only by mail, the notice of intent must be filed within 12 days after the date of mailing of this notice." The notice or clerk's certificate of mailing does not state that the JV820 and JV825 forms were included.

The Permanency Planning Hearing

In April 2018, mother filed two Welfare and Institutions Code section 388 petitions. The juvenile court summarily denied the first petition and set the second one for a hearing on the same day as the permanency planning hearing.

In its report for the permanency planning hearing, the Agency recommended the termination of parental rights with a permanent plan of adoption. The social worker noted that father had been unresponsive to the Agency's efforts to contact him and he had not contacted the Agency to inquire about L.D.'s well-being. Both the maternal aunt in Texas and S.G.'s paternal grandmother in Connecticut wanted to adopt the children. L.D. had identified both relatives as family with whom she would like to live—she saw both women as mother figures, and loved and respected them both. The Agency opined the children were adoptable and it would not be detrimental to terminate parental rights.

Father was not present at the May 8, 2018 combined hearing regarding permanency planning and mother's modification petition. The hearing was continued first to May 30, 2018, to provide the Agency with more time to evaluate mother's petition, and then to June 6, 2018, to allow father to appear via CourtCall. At the June 6, 2018 hearing, at which father appeared via CourtCall, the juvenile court set a contested hearing on mother's modification petition and permanency planning for July 17, 2018. In addition, at the Agency's request, the juvenile court found that out-of-state placement of the children was the most appropriate plan for them and ordered them placed in Texas.

In an addendum report, the Agency stated that the children were placed together with their maternal aunt in Texas on June 11, 2018.[6] On June 16, 2018, father participated in an in-person, four-hour, visit with L.D. in Texas. The care provider supervised the visit and did not report any concerns. Father was actively working on post-adoptive contact with the maternal aunt, who the Agency identified as the children's prospective adoptive parent.

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6 The social worker learned in April 2018 that S.G.'s paternal grandmother's ICPC request for placement had been denied due to her significant other's background check not clearing. A Connecticut ICPC supervisor informed the social worker that the significant other's live scan results could take four to five months to process and the estimated date to complete the licensing process was unknown.

At the July 17, 2018 contested hearing, father was present via CourtCall, while mother was personally present. No evidence was presented. The parties stipulated the children were adoptable. After argument by counsel, the juvenile court denied mother's modification petition, found the children adoptable and terminated parental rights.

DISCUSSION

I. Jurisdiction Under the UCCJEA

Father contends the juvenile court lacked subject matter jurisdiction because it failed to comply with the UCCJEA. We disagree.

A. Standard of Review

"Subject matter jurisdiction either exists or does not exist at the time the action is commenced and cannot be conferred by stipulation, consent, waiver or estoppel." (*In re Jaheim B.* (2008) 169 Cal.App.4th 1343, 1348; *In re A.C.* (2005) 130 Cal.App.4th 854, 860.) "We are not bound by the juvenile court's findings regarding subject matter jurisdiction, but rather 'independently reweigh the jurisdictional facts.' " (*In re A.C., supra,* 130 Cal.App.4th at p. 860.) "[A]s with any statute, interpretation of the UCCJEA is a question of law we review de novo." (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1287.)

B. The UCCJEA

The UCCJEA, adopted in California effective January 1, 2000 (see *In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1096 (*Cristian I.*) and Texas effective September 1, 1999 (see *Powell v. Stover* (2005) 48 Tex. Sup. Ct. J. 780 [165 S.W.3d 322, 325]), "governs dependency proceedings and is the exclusive method for determining the proper forum to decide custody issues involving a child who is subject to a sister-state custody order." (*Cristian I., supra,* 224 Cal.App.4th at p. 1096; see §§ 3421, 3424, subd. (d); *In re Stephanie M.* (1994) 7 Cal.4th 295, 310.)

The UCCJEA was enacted in part to litigate custody where the child and family have the closest connections, avoid jurisdictional competition and conflict, and promote

exchange of information and assistance between courts of sister states. (*In re C.T.* (2002) 100 Cal.App.4th 101, 106 (*C.T.*).) The policy of the UCCJEA is not to establish concurrent jurisdiction, but to identify one court that will exercise primary jurisdiction. " 'Courts in other states are required to defer to that court's continuing jurisdiction and to assist in implementing its orders.' " (*In re Stephanie M., supra,* 7 Cal.4th at p. 313.)

To solve the problem of competing custody orders, the UCCJEA allows only one state to exercise jurisdiction at any given time and places limitations on the exercise of jurisdiction by any other state. (§ 3426; 9 pt. IA West's U. Laws Ann. (1999) U. Child Custody Jurisdiction and Enforcement Act, com. to § 206, p. 681.)[7] The UCCJEA accomplishes this by giving the child's home state absolute priority in issuing initial custody orders (§ 3421; *Brewer v. Carter* (2013) 218 Cal.App.4th 1312, 1317), making the issuing state's jurisdiction exclusive and continuing (§ 3422), and allowing another state court to modify a preexisting custody order only upon meeting certain criteria (§ 3423).[8] Under that criteria, a California court may modify another state's preexisting

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[7] " ' "Reports of commissions which have proposed statutes that are subsequently adopted are entitled to substantial weight in construing the statutes." ' " (*Smith v. Superior Court* (1977) 68 Cal.App.3d 457, 463 [citations omitted].)

[8] Section 3423 provides: "Except as otherwise provided in Section 3424, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph (1) or (2) of subdivision (a) of Section 3421 and either of the following determinations is made: [¶] (a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 3422 or that a court of this state would be a more convenient forum under Section 3427. [¶] (b) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state."

Section 3421, subdivision (a)(1) provides, in pertinent part, that "a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true: [¶] (1) This state is the home state of the child on the date of the commencement of the proceeding, . . ."

custody order if California is the child's home state[9] and a court of the issuing state determines it no longer has exclusive, continuing jurisdiction under section 3422 or the California court would be a more convenient forum under section 3427.[10] (§§ 3421, subd. (a)(1), 3423, subd. (a).) Once California properly exercises modification jurisdiction, it has continuing and exclusive jurisdiction, and the state that issued the preexisting order loses jurisdiction. (§ 3422, subd. (a).)

Section 3424 "provides an exception to the exclusive jurisdictional bases for making an initial child custody determination or modifying a sister-state custody order. (§§ 3421, subds. (a), (b), 3423.)" (*Cristian I., supra,* 224 Cal.App.4th at p. 1097.) Under section 3424, a California court has "temporary emergency jurisdiction" to issue custody orders for a child subject to an existing sister state custody order if the child is present in this state and the court finds that an emergency necessitates the protection of the child from mistreatment and abuse. (§ 3424, subd. (a); *C.T., supra,* 100 Cal.App.4th at p. 107.) "An 'emergency' exists when there is an immediate risk of danger to the child if he or she is returned to a parent." (*In re Jaheim B., supra,* 169 Cal.App.4th at p. 1349.)

"When a California court asserting temporary emergency jurisdiction is aware that a child custody determination has been made by another jurisdiction, the California court 'shall immediately communicate with the other court.' (§ 3424, subd. (d).) 'To make an appropriate order under the [UCCJEA], the California court needs to know whether the

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9 " 'Home state' " is defined as the state where the child lived with a parent for at least six consecutive months immediately before the commencement of the child custody proceeding. (§ 3402, subd. (g).)

10 Section 3427, subdivision (a) provides that a court of this state that has jurisdiction under the UCCJEA to make a child custody determination "may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." Texas has the same statutory provision for declining to exercise jurisdiction when it determines it is an inconvenient forum and another state is a more appropriate forum. (See Tex. Fam. Code, § 152.207; *Powell v. Stover, supra,* 165 S.W.3d at p. 327.)

sister state court wishes to continue its jurisdiction and how much time it requires to take appropriate steps to consider further child custody orders.' [Citations.] 'The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.' (§ 3410, subd. (b).) Additionally, a record must be made of the substantive communications between the courts, and the parties granted access to the record. (§ 3410, subds. (c), (d).)" (*Cristian I., supra,* 224 Cal.App.4th at pp. 1097–1098.)

C. Analysis

When the court in Kings County initially detained the children, it did not have jurisdiction to make an initial custody order (§ 3421) or to modify the preexisting Texas custody order (§ 3423), as the Texas custody order gave Texas exclusive, continuing jurisdiction. Although California was L.D.'s home state, since she had been in California over six months when the dependency petition was filed, California could not immediately exercise modification jurisdiction due to Texas's preexisting jurisdiction (§ 3423). The only basis upon which it could lawfully assert jurisdiction was under section 3424, which granted California the ability to exercise temporary emergency jurisdiction because L.D. was "present in this state," and it was "necessary in an emergency to protect the child because the child, or a sibling or parent of the child, [was] subjected to, or threatened with, mistreatment or abuse." (§ 3424, subd. (a).) Father concedes the California court properly exercised temporary emergency jurisdiction over L.D.

Once it assumed temporary emergency jurisdiction, the California court was required to communicate with the Texas court. (§ 3424, subd. (d).) The record shows the California court did so, as it contacted the Texas judge. Although the California court stated the Texas court had relinquished jurisdiction to California under section 3421,

subdivision (a)(2)[11] and it assumed jurisdiction under section 3421, subdivision (a)(3),[12] the California court actually could assume jurisdiction to modify the Texas custody order under section 3423, subdivision (a), as California was L.D.'s home state and the Texas court determined the California court would be a more convenient forum under section 3427.

Father contends the record does not support a finding that Texas relinquished jurisdiction, as "California failed to comply with the requirements to produce written orders or communications before finding that another state of exclusive jurisdiction has relinquished it." Contrary to father's assertion, the Texas court was not required to issue a written order expressly finding that California was the more appropriate or convenient forum under section 3427. Rather, the California court could conclude the Texas court made such a finding based on its discussion with that court. (See, e.g., *In re A.C.* (2017) 13 Cal.App.5th 661, 675; *In re M.M.* (2015) 240 Cal.App.4th 703 (*M.M.*).)

The decision in *M.M.* is instructive. There, the social services agency filed a dependency petition in San Diego County Superior Court regarding a child who lived in California for less than six months, but had previously lived in Japan, which presumably was the child's home state under the UCCJEA. (*M.M., supra,* 240 Cal.App.4th at pp. 706, 711.) The juvenile court attempted to contact the family court in Japan to

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11 Under section 3421, subdivision (a)(2), California has jurisdiction to make an initial custody determination if (1) Texas has declined to exercise jurisdiction on the grounds that California is the more appropriate forum under section 3427; (2) L.D. and at least one of her parents has a significant connection with California, other than mere physical presence; and (3) substantial evidence is available in California concerning L.D.'s care, protection, training and personal relationships.

12 Section 3421, subdivision (a)(3) provides that a California court has jurisdiction to make an initial custody determination if all courts having jurisdiction under section 3421, subdivisions (a)(1) and (2) "have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine custody of the child under Section 3427 or 3428."

discuss whether it would exercise subject matter jurisdiction over the case, but the Japan court's representatives responded that it would be inappropriate for one of its judges to discuss jurisdiction in a specific case by telephone or e-mail, and the Japan court failed to timely respond to the juvenile court's detailed certified letter sent by express mail. (*Id.* at pp. 710–711, 714.) Accordingly, the court concluded the Japan court was not interested in discussing the issue and therefore it had jurisdiction under the UCCJEA. (*M.M., supra,* 240 Cal.App.4th at pp. 709, 712.)

On appeal, the court noted that section 3421, subdivision (a)(2), was ambiguous regarding how a court of a home state or other potential forum state may decline jurisdiction. (*M.M., supra,* 240 Cal.App.4th at p. 716.) The court refused to adopt the parent's position that the home state must decline jurisdiction by an express order and make a finding that California is a more appropriate forum, as this would create a rule that could leave a child in "limbo between two forums" if a home court refused to commit, one way or the other, to exercise jurisdiction over the child. (*Id.* at pp. 716–717.) The court therefore concluded that "when a home state declines jurisdiction in any manner that conveys its intent *not* to exercise jurisdiction over a child in connection with a child custody proceeding" including inaction or even refusing to discuss the issue of jurisdiction despite the juvenile court's good faith attempts to do so, "such inaction or refusal is tantamount to a declination of jurisdiction by the home state on the grounds California is the more appropriate forum under subdivision (a)(2) of section 3421." (*M.M., supra*, 240 Cal.App.4th at p. 717.) Under that rule, the court concluded the juvenile court properly found the child's home state of Japan declined jurisdiction on the ground California was the more appropriate forum under section 3421, subdivision (a)(2). (*M.M., supra*, 240 Cal.App.4th at p. 717; see also *In re A.C., supra,* 13 Cal.App.5th at pp. 674–675 [substantial evidence supported juvenile court's finding that Mexico declined to exercise jurisdiction over the children's dependency cases on the ground

California was the more appropriate forum, where the Mexico judicial authorities failed to timely respond to the California court's e-mails].)

Here, as in *M.M.*, the statutory scheme is ambiguous regarding how a court with exclusive jurisdiction determines a California court would be a more convenient forum in order to confer jurisdiction under section 3423 and communicates that determination to the California court. There is nothing in the statutory scheme that requires a written order. Instead, the statutory scheme allows for communication between the courts, and requires that a "record" be made of substantive communications, defining the term "record" as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." (§ 3410, subds. (a), (d), (e).)

Father contends that section 3424, subdivision (c), "clearly asks for an order from the sister state before California could take over exclusive jurisdiction," and asserts *M.M.* is not instructive because it never discussed this statute. Section 3424, subdivision (c) provides: "If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires."

We reject father's contention that section 3424, subdivision (c) specifies how the issuing state is expected to decline jurisdiction. This subdivision is "concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under the [UCCJEA] or when a subsequent custody proceeding is filed in a State with jurisdiction under Sections [3421–3423]." (9 pt. IA West's U. Laws Ann.,

supra, U. Child Custody Jurisdiction and Enforcement Act, com. to § 204, p. 677.) The subdivision "allows the temporary order to remain in effect only so long as is necessary for the person who obtained the determination" of temporary emergency jurisdiction "to present a case and obtain an order from the State with jurisdiction . . . . If there is an existing order by a State with jurisdiction under Sections [3421–3423], that order need not be reconfirmed." (9 pt. IA West's U. Laws Ann., *supra,* U. Child Custody Jurisdiction and Enforcement Act, com. to § 204, pp. 677–678.) "The temporary emergency determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with jurisdiction under Sections [3421–3423]. The court with appropriate jurisdiction also may decide, under the provisions of [section 3427], that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order, or the child, and decline jurisdiction under [section 3427]." (9 pt. IA West's U. Laws Ann., *supra,* U. Child Custody Jurisdiction and Enforcement Act, com. to § 204, p. 678.)

As this comment explains, the purpose of section 3424, subdivision (c) is to give a party time to obtain a custody order from a sister court with exclusive jurisdiction so that temporary emergency jurisdiction may end. A new order is not required, however, where, as here, there is an existing order. In that situation, the California court's duty is to communicate with the sister state's court to ascertain whether that court wishes to assert its jurisdiction or relinquish it to California. The statute does not specify how the sister state court may decline jurisdiction or whether a written order is required. Instead, we agree with *M.M.* that a sister state court with exclusive jurisdiction may determine a California court is a more convenient forum "in any manner that conveys its intent *not* to exercise jurisdiction over a child in connection with a child custody proceeding." (*M.M., supra,* 240 Cal.App.4th at p. 717.)

Here, the Texas court conveyed its intent not to exercise jurisdiction over L.D. when the Texas judge communicated to the California court that it had relinquished

jurisdiction. Father contends this was insufficient to establish Texas relinquished jurisdiction because neither the written communications between the Texas and California judges, nor the substance of those communications, are in the record. Father claims that without this information, he cannot ascertain whether the Texas judge was aware all of L.D.'s relatives lived in Texas, L.D. had no relatives in California other than mother, the Texas DFPS had approved his home for placement, and the Texas custody orders gave father custody and visitation rights.

Father's complaints concern the manner and content of the juvenile court's communication with the Texas court. Father, however, did not object below. His counsel was present when the juvenile court stated it had communicated with the Texas judge and the Texas court had relinquished jurisdiction to California. If counsel believed the juvenile court gave the Texas court incomplete information, he should have raised the issue at that time. The court easily could have explained why it believed it had adequately addressed the subject during its communications with the Texas court. Although the juvenile court did not report the reasons the Texas court relinquished jurisdiction, the court clearly stated that it had done so.

Further, the juvenile court was not required to make a verbatim recording of its communication with the Texas court, but instead properly memorialized the substance of the communication at the hearing. (*C.T., supra,* 100 Cal.App.4th at p. 112; § 3410, subd. (e).) Thus, any defect in the manner in which the communication occurred and was reported was correctible if timely raised. Because father did not object to the contents of the conversation, ask for clarification or object to the way it occurred, he has forfeited his right to assert error on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [a parent's failure to object or raise certain issues in the juvenile court prevents the parent from claiming error on appeal].)

Father contends that even if the California court properly found Texas declined to exercise jurisdiction on the ground California was the more appropriate forum,

substantial evidence does not support the additional findings required under section 3421, subdivision (a)(2)(A) and (B). Specifically, he asserts L.D. and mother did not have a significant connection to California other than their mere physical presence, and there is not substantial evidence available in California concerning L.D.'s care, protection, training, and personal relationships.

We need not decide the issue, however, as jurisdiction was proper under section 3423, which requires only that California is L.D.'s home state and that the Texas court determines the California court would be a more convenient forum. (§ 3423, subd. (a).) Even so, L.D. and mother had significant connections to California, as they resided in California. In addition, there is no question that substantial evidence was available in California concerning L.D.'s care, protection, training, and personal relationships, as mother and L.D. were residents of California; L.D.'s half sibling, who was born in California, was the subject of the same dependency proceeding; and the jurisdictional facts alleged in the petition occurred in California, where the evidence would be found.

In sum, since California was L.D.'s home state and the Texas court determined that California was a more convenient forum for resolution of the dependency case, father's claim that California did not have subject matter jurisdiction fails.

II. Reasonableness of Services

Father contends he was not provided reasonable reunification services because the Agency made no effort to set a telephonic or "FaceTime" visitation schedule, or refer him to local resources to foster family reunification. He also contends the delay in placing L.D. with the maternal aunt "made visitation and reunification virtually impossible."

Although father did not file a notice of intent or writ petition from the juvenile court's order setting the permanency planning hearing at the six-month review hearing, we reach the reasonable services issue he raises in this appeal because the record shows the writ advisement mailed to father did not cite to the correct rules of court or state that forms JV-820 and JV-825 were also mailed to father, which facts the Agency does not

dispute. (See *In re Cathina W.* (1998) 68 Cal.App.4th 716, 722 [an appellate court may address the merits of a parent's challenge to an order setting a permanency planning hearing on appeal from a parental rights termination order when the juvenile court fails to discharge its duty to give timely, correct notice of the writ remedy].)

Services are reasonable when the supervising agency identifies a family's problems, offers services targeting those problems, maintains reasonable contact with the offending parent(s), and makes reasonable efforts to assist in areas where compliance is difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) To be reasonable, the services provided need not be perfect. The "standard is not whether [they] were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) The "adequacy of reunification plans and the reasonableness of the [Agency's] efforts are judged according to the circumstances of each case." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) We review the juvenile court's reasonable services finding for substantial evidence. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Father's complaint is that the Agency did not do enough to facilitate visitation and assist him with completing his parenting class. The Agency, however, provided father with a list of providers of parenting classes in his area. In August 2017, father said he enrolled in parenting classes, but he never completed them. By December 2017, he still had not completed parenting classes. While father told the social worker he was having difficulty finding a class that would fit his work schedule, he also said he would complete a parenting class within the next couple weeks, thereby indicating that he in fact could find a class that he was able to attend.

With respect to visitation, while there was not a set schedule, the care providers had father's telephone number and attempted to contact him for visits, but he was not available. Father never complained to the social worker that he was not receiving visits or called to check on L.D.'s well-being.

Reunification is a collaborative effort and a parent is presumed capable of complying with a reasonable services plan. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 415.) Consequently, the parent is responsible for communicating with the Agency and participating in the reunification process. (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) Here, father failed to communicate with the Agency and participate in the reunification process. If father felt during the reunification period that his services were inadequate, he "had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan." (*In re Christina L., supra,* 3 Cal.App.4th at p. 416.) A parent may not "wait silently until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing." (*Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093.)

Father also contends the Agency unduly delayed in evaluating the maternal aunt's home and placing the children with her. He argues that had L.D. been placed with the maternal aunt earlier, he would not have encountered obstacles to visitation. Father has not shown, however, that the efforts to find a relative placement is a factor—or even relevant—in determining reasonableness of services. We therefore reject his claim.

DISPOSITION

The order terminating father's parental rights is affirmed.

_____
LEVY, Acting P.J.

WE CONCUR:

_____
FRANSON, J.

_____
MEEHAN, J.